"Where the court has ordered the removal of any private caveat under section 327, or has refused an application under sub-section (2) of section 326 for an extension of time with respect to any such caveat, the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based."

In the instant case, the former caveat was removed not pursuant to any Order of Court but pursuant to the administrative act of the Registrar of Titles acting under section 326(3) of the *National Land Code*. It seemed to me, with all due respect, that all the learned judges in the local cases cited were unduly swayed by the decision of H.T. Ong, J. (as he then was) in *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim & Ors.*[8] and his observation therein that "once a caveat has lapsed and a memorial is made by the registering authority it is extinguished for ever."

A careful reading of the judgment of H.T. Ong, J. in that case will show that it turned on a true construction of certain provisions of the former *Land Code* (Cap. 138) which bear no resemblance to the equivalent provisions in the *National Land Code*. Specifically, section 175 of the *Land Code* which expressly prohibited further caveats by the same person in the same matter finds no place in the *National Land Code* and, conversely, there was no provision in the former equivalent to section 329(2) in the latter. I accordingly held that the decision of Arulanandom, J. in *Hong Keow Tee's case (supra)* was given *per incuriam* in that he overlooked relevant statutory provisions, more particularly, vital differences in the wording of the relevant provisions in the former *Land Code* and the *National Land Code* to which I have just adverted, and was accordingly a decision I should refuse to follow.

If I may be pardoned for saying so, this case illustrates how, under the pressures of practice and overcrowded judicial lists, a line of authorities may gradually grow in the wrong direction because important statutory provisions have escaped attention.

It was for the above and other reasons that I dismissed this application.

Application dismissed.

Solicitors: *Chang & Vello; Gan Teik Chee & Ho.*

PUBLIC PROSECUTOR v. SELVARAJAH

[A.Cr.J. (Gunn Chit Tuan J.) November 7, 9 & 10, 1983]

[Penang – Criminal Appeal No. 13 and 14 of 1982]

Criminal Law and Procedure – Charge of carnal knowledge with female person under 16 years of age – Proof of carnal knowledge – Corroboration – Sentence – Women and Girls Protection Act, 1973, s. 16(1).

In this case the respondent had been convicted of the offence of carnal knowledge with a female person under 16 years of age except by way of marriage an offence under section 16(1) of the Women and Girls Protection Act, 1973. He was sentenced to 18 months' imprisonment The Public Prosecutor appealed on the ground of inadequacy of sentence and the respondent appealed against the conviction and sentence.

Held: (1) in cases of carnal knowledge of girls under sixteen years of age, it is sufficient for the prosecution to prove penetration, the crime being complete without emission;

(2) in this case there was not only medical evidence to corroborate the complainant's evidence of the factum of carnal knowledge but also documentary evidence to support her identification of the accused;

(3) the complainant in this case was a consenting party, although her consent was immaterial. Nevertheless the accused was a first offender and in all the circumstances of the case the sentence would be reduced to nine months.

Cases referred to:

(1) *R.* v. *Marsden* [1891] 2 Q.B. 149.
(2) *Din* v. *Public Prosecutor* [1964] M.L.J. 300.
(3) *Director of Public Prosecutions* v. *Kilbourne* [1973] A.C. 729, 758.
(4) *R.* v. *Beale* (1865) L.R. 1 C.C.R. 10.

CRIMINAL APPEAL.

Mohamed Nordin bin Haji Sulaiman (Deputy Public Prosecutor) for the appellant.

Bala Mahesan for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: Selvarajah s/o Raman M. Mayandi ("the accused") was convicted of the offence of carnal knowledge with a female person under the age of 16 years except by way of marriage under paragraph (1) of sub-section (1) of section 16 of the Women and Girls Protection Act, 1973, and was sentenced to 18 months imprisonment. He appealed against conviction and sentence whilst the Public Prosecutor being dissatisfied with the sentence has also appealed against it on the grounds of inadequacy and the failure of the learned Magistrate to consider "the

element of public policy in passing sentence". The charge against the accused was as follows:-

"That you on February 23, 1981, at bout 3.20 p.m. in the store of block C, Rifle Range Flats, in the District of Georgetown in the State of Penang did have carnal knowledge with a female person under the age of 16 years, to wit, LIM SWEE SIM (F), except by way of marriage and that you have thereby committed an offence punishable under section 16(1) of the Women and Girls Protection Act 106/73."

According to Lim Swee Sim (the complainant) she was born on February 2, 1966 and was therefore just over 15 years old at the time of the alleged offence. She was about 16 years 2 months old when she was affirmed and gave evidence in court and said that she came to know the accused in January 1981 when he was working as a sweeper at the Rifle Range Flats where she lived with her father, brothers and sisters. She and the accused became friends and on February 23, 1981 at about 3.30 p.m. she met the accused who invited her to go into a storeroom in Block C of the said Flats. After some conversation the accused pulled her into a wall recess and started to "romance" with her and then "inserted his penis into her private part. There was penetration. She felt pain. He penetrated into her private part for about three minutes." The rest of her evidence concerned events such as her visits to the accused's home which took place after the date of the offence alleged in the above charge. The complainant was subjected to severe cross-examination by the defence and admitted that a portion of her first information report (exhibit P6) made by her on June 4, 1981 was not true. The defence managed to show that there were various contradictions in her evidence in court compared to what she had stated in her report and counsel contended that she was therefore lying with regard to various matters. However the learned Magistrate who had the benefit of seeing the complainant give her evidence found her to be a truthful witness after two lengthy sessions of cross-examination.

Counsel for the accused also pointed out that the expression 'carnal knowledge' is not defined in the said Act. According to the *Shorter Oxford English Dictionary* it means sexual intimacy and in *Stroud's* Judicial Dictionary it is stated that "in the crime of RAPE, 'carnal knowledge' means that penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation" (Steph. Cr., 9th ed., p.262; section 63, Offences Against the Person Act 1861 (c.100)." In cases of carnal knowledge of girls under sixteen, it is therefore sufficient for the prosecution to prove penetration, the crime being complete without emission. (See *R.* v. *Marsden*[1]). In this case it was contended by defence counsel that one Dr. Abdul Aziz (P.W.3) who examined the accused had admitted that he did not test him to see if he was capable of erection and that there was therefore no evidence to prove that the accused was capable of committing the alleged offence. However in this case as there was the evidence of Dr. Kanagalingam (P.W.3A), the Consultant Gynaecologist, General Hospital, Penang that he had also examined the complainant's genitals and found that there were old healed lacerations which had been caused in normal previous sexual intercourse, that was sufficient proof of penetration of the complainant's sexual organ by some male organ of generation.

On corroboration both the learned counsel for defence and the Deputy Public Prosecutor cited various Malaysian and English cases to which I do not, with respect, propose to refer to except the Federal Court case of *Din* v. *Public Prosecutor*[2] in which case Thomson L.P. (as he then was) delivered the oral judgment of the court and held that:-

"The desirability for corroboration of the evidence of the prosecutrix in a rape case (which in any event has not yet crystallized into something approaching a rule of law and which is still a rule of practice and prudence) springs not from the nature of the witness but from the nature of the offence. The necessity for corroboration, generally speaking, is not so imperative with regard to the identity of her assailant as to the fact of the offence itself. Though it might be dangerous to find the factum of rape on the uncorroborated evidence of the prosecutrix, once that factum of rape is established there seems to be nothing left to support the view that her identification of the assailant calls for corroboration any more than it would in relation to any other type of offence."

In this case there was the evidence of the Consultant Gynaecologist to corroborate the evidence of the complainant regarding the factum of carnal knowledge although it was not corroboration of that part of her evidence in which she had put the blame on the accused. It was also the contention of learned counsel for the accused that there was no evidence of opportunity and disposition in this case.

The word "corroboration" is not a technical term of art; it means by itself no more than evidence tending to confirm, support or strengthen

other evidence (*Director of Public Prosecution* v. *Kilbourne*[3]). Reference may be made to the following passage in paragraph 454 of Volume 11 of *Halsbury's* Laws of England (4th edn.) which I would respectfully adopt:-

"The corroboration need not consist of direct evidence that the defendant committed the offence, nor need it amount to confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respects material to the charge under consideration. It is sufficient if it is circumstantial evidence of the defendant's connection with the offence; but it must be independent evidence, and must not be vague."

In this case there was not only the oral testimony of the complainant of her association with the accused from January 1981 until June that year including her visits to the accused's home but there were also several letters written by the complainant to the accused (exhibits D7, P13A to E) which were received by the police investigation officer (P.W.5) from the accused's mother and were produced in court as evidence by the prosecution without any objections by the defence and show that the accused had a close and intimate relationship with the complainant during that year. Therefore there was not only medical evidence to corroborate the complainant's evidence of the factum of carnal knowledge but also documentary evidence to support her identification of the accused. To use the words of Thomson L.P. again in *Din's* case,[2] "it is a case of which story is to be preferred and it seems to follow from this that corroboration of any part of the prosecutrix's story is 'pro tanto' of some value."

As the accused has not been able to satisfy me that there are grounds for interfering with his conviction by the lower court, I therefore dismissed his appeal against conviction. As regards the accused's appeal against sentence, I considered that the complainant was a consenting party, although her consent was immaterial (See *R.* v. *Beale*[4]). Nevertheless the accused was a first offender and in all the circumstances of the case I considered that justice would be served if I reduced the sentence to nine months. The Public Prosecutor's appeal against sentence was therefore dismissed.

Order accordingly.

Solicitors: *Bala Mahesan & Co.*

SIEW KUEN WILLIAMS v. YONG SIEW IN

[O.C.J. (Siti Norma Yaakob J.) August 16, 1983]
[Kuala Lumpur – Civil Suit No. 373 of 1975]

Practice & Procedure – Costs – Solicitor and Client bill – Taxation – Can an advocate present an itemised bill in excess of the amount stated in the gross sum bill? – Legal Profession Act 1967, ss. 121(1)(a) & 132.

The issues before the court were: (1) can the advocate present an itemised bill in excess of the amount stated in the gross sum bill? (2) whether there should be an Order of Court before the itemised bill can be taxed by the Registrar.

Held: (1) the answer must be in the affirmative as by acceding to a client's request to submit an itemised bill in place of the gross sum bill, "the gross sum bill shall thereupon be of no effect". The client who, not being satisfied with the gross sum charged, demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first charged;

(2) in the case of the solicitor and client bill, the obligation to pay becomes due the moment the client engages the services of an advocate. There is therefore no necessity for any Order of Court to precede the taxation of such a bill.

Case referred to:

(1) *In Re Taxation of Costs, In re Solicitors* [1943] K.B. 69.

CIVIL SUIT.

Dato' Kok Wee Kiat for taxing advocates.
Datin Saraswathy Devi for party chargeable.

Cur. Adv. Vult.

Siti Norma Yaakob J.: The present proceedings before me relate to an application under O.56 r.2(2) of the Rules of the High Court 1980 by a taxing advocate to adjourn into open Court further arguments on the Notice of Appeal filed against the decision of the Registrar dated May 5, 1983. The Registrar had, on May 4, 1983 ruled against the objection raised by the party chargeable on a bill of costs, (the defendant in the suit) by holding that she had the jurisdiction to tax the itemised solicitor and client bill dated March 17, 1983 which was then before her for taxation. Being dissatisfied with this decision, the party chargeable filed a Notice of Appeal dated May 5, 1983 and after hearing arguments in chambers, I had allowed the appeal and ordered that the only bill the Registrar can tax is the gross sum bill dated August 11, 1982 which had been earlier presented by the taxing advocate to the party chargeable. Being dissatisfied with this order, the taxing advocate